

REMARKS

Claims 1-6 and 20-35 are now pending in the application. Claims 1-6 and 20-35 stand rejected. Claims 7-19 have been previously cancelled. The Examiner is respectfully requested to reconsider and withdraw the rejections in view of the remarks contained herein.

REJECTION UNDER 35 U.S.C. § 112

Claim 4 stands rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. This rejection is respectfully traversed.

Applicants respectfully refer the Office to paragraphs [0053] and [0055] of the specification as filed, and to Figs. 3, 5 and 6 as filed. In both the specification and the figures, the second end 90 is rotated relative to the first end 84 about the generally vertical axis 86 (Fig. 6). As illustrated in Figs. 3 and 6, the second end 90 is in the stowed position, and the second end 90 can rotate relative to the first end 84 about the generally vertical axis 86 through approximately 90 degrees to reach the access position, as illustrated in Fig. 5. Applicants further note that "[s]atisfaction of the 'written description' requirement does not require in haec verba antecedence in the originally filed application. *Staehelin v. Secher*, 24 USPQ2d 1513 (B.P.A.I. 1992). Further, Applicants note that:

Adequate description under the first paragraph of 35 U.S.C. 112 **does not require *literal support for the claimed invention.*** . . . Rather, it is sufficient if the originally-filed disclosure would have conveyed to one having ordinary skill in the art that an appellant had possession of the concept of what is claimed.

Id. at 1236 citing *In re Anderson*, 471 F.2d 1237, 176 USPQ313 (C.C.P.A. 1973) (emphasis added). Applicants note that the specification, drawings and claims in the originally-filed disclosure would have conveyed to one of skill in the art that the inventors, at the time the application was filed, had possession of the claimed subject matter.

Moreover, with respect to the new matter rejection, Applicants note that the drawings as originally filed clearly illustrate that the second end 90 can rotate relative to the first end 84 about the generally vertical axis 86 through approximately 90 degrees to reach the access position (Fig. 5). Applicants note that since the drawings illustrate this feature, no new matter has been entered in the amendment made to Claim 4.

Accordingly, Applicants respectfully assert that the present teachings as set forth in the claims properly enables any person skilled in the art to make and use the invention. Therefore, reconsideration and withdrawal of this objection are respectfully requested.

Claims 34 and 35 stand rejected under 35 U.S.C. § 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time

the application was filed, had possession of the claimed invention. This rejection is respectfully traversed.

Applicants respectfully refer the Office to paragraphs [0052] and [0055] and Figs 5 and 6. Applicants note that paragraph [0055] states that the open end 92 of the spout 82 is below the opposite end 84, with the point of connection of the opposite end 84 below the full fill level of the water tank 80, as shown in Fig. 6 (shown in the rotated position in Fig. 5). Applicants also refer the Office to the remarks above regarding Claim 4. In addition, Applicants note that:

Drawings alone may provide a written description of an invention as required by §112. . . . Drawings constitute an adequate description if they describe what is claimed and convey to those of skill in the art that the patentee actually invented what is claimed.

Cooper Cameron Corp. v. Kvaerner Oilfield Prods., 291 F.3d 1317, 62 USPQ2d 1846, 1850 (Fed. Cir. 2002).

As the drawings as filed adequately display that the second opening is below the flush tank in the drainage position, Applicants assert that no new matter was introduced in Claims 34 and 35. Therefore, reconsideration and withdrawal of this objection are respectfully requested.

Claims 1, 3-6, 20-23, 25-32, 34 and 35 stand rejected under 35 U.S.C. § 112, first paragraph, because the specification, while being enabling for spout ends rotatable/rotatably coupled by components, does not reasonably provide enablement for only relative rotation. This rejection is respectfully traversed.

Initially, Applicants refer the Office to the remarks above regarding Claims 4, 34 and 35. The Office has stated that the specification, "while being enabling for spout ends rotatable/rotatably coupled by components, does not reasonably provide enablement for only relative rotation." Applicants respectfully direct the Office's attention to paragraphs [0054] and [0055]. Specifically, paragraph [0054] provides: "[t]he first and second components 96 and 98 are rotatably coupled at a joint 100". See Fig. 6. In addition, [0055] provides: "the second component 98 is rotated in the direction of arrow A (see Fig. 5 about a generally horizontal axis) **relative to the first part 96** from an upright fill position to a downward or drainage position." Applicants also note that "...the observation of a lack of literal support does not, in and of itself, establish a *prima facie* case for lack of adequate descriptive support under the first paragraph of 35 U.S.C. 112." *Ex parte Parks*, 30 USPQ2d 1234 (B.P.A.I. 1994). Based on at least the description recited in paragraphs [0054] and [0055] of the specification and Figs. 5 and 6, Applicants respectfully assert that the specification of the present application would enable any person skilled in the art to make and use the present claimed apparatus. Therefore, reconsideration and withdrawal of this objection are respectfully requested.

REJECTION UNDER 35 U.S.C. § 103

Claims 1-6, 20-29, 30-34 and 35 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Sargent et al. (U.S. Pat. No. 4,776,631; hereinafter "Sargent") and Link (U.S. Pat. No. 779,946; hereinafter "Link"). This rejection is respectfully traversed.

Initially, Applicants note that Sargent discloses a toilet system 100. The toilet system 100 can include a bowl 162 and a water storage chamber 170. A fill 220 can be coupled to the water storage chamber 170. The fill 220 can comprise a plastic bottle 650 that has a first open end 654 and a second end that can include a conduit 660. The conduit 660 can couple the plastic bottle 650 to the water storage container 170 via an integrated nipple 662 that is coupled to the bench. The conduit 660 can be coupled to the water storage container 170 such that as the water enters the plastic bottle 650, gravity assists the flow of the water into the water storage container 170. In particular, the water entering the plastic bottle 650 is drawn by gravity through the conduit 660 into the water storage container 170 until the water level between the plastic bottle 650 and the water storage container 170 reach an equilibrium, as indicated by the graduations on the side of the plastic bottle 650. The second end of the plastic bottle 650 can also be snap fit to an intermediate connector member 674. The intermediate connector member 674 can be coupled to a bracket 670, which is coupled to the bench. The intermediate connector member 674 can enable the plastic bottle 650 to rotate about a vertical axis 652. A pourspout 210 can be used in combination with a vent valve assembly 218 to drain the liquid from the water storage chamber 170. With regard to Link, Link discloses a rotary funnel cock that can be used to fill a car water heating apparatus. In contrast, independent Claim 1 recites:

...the second end being **rotatable relative to the first end about a generally horizontal axis** between a **fill position** and a **drainage position** such that the source of flush water is drained from the flush tank in the drainage position (emphasis added).

Independent Claim 20 recites:

...a spout including a first open end and a second open end, the first open end in fluid communication with the flush tank, the second open end **rotatable relative to the first open end about a generally horizontal axis for draining the source of flush water from the flush tank** (emphasis added).

In view of the above discussion, Applicants respectfully assert that neither Sargent nor Link, singly or jointly, teach, suggest or disclose each and every element of Claims 1 and 20. Thus, Applicants respectfully submit that the combination of references cited by the Office does not present a *prima facie* case of obviousness.

First, Applicants note that the Sargent reference is related to toilet or sanitary systems, while the Link reference is directed to a funnel cock for a car heating system, such as a water radiator. Applicants respectfully assert that the Link patent neither discloses a sanitary system nor relates to the field of sanitary systems or a field reasonably pertinent to the resolution of the problem being solved by the present disclosure. The C.C.P.A. has explained the policy that the references be available to the inventor as follows:

In resolving the question of obviousness under 35 U.S.C. §103(a), we presume full knowledge by the inventor of all the prior art in the field of his endeavor. However, with regard to prior art outside the field of his endeavor, we only presume knowledge from those arts reasonably pertinent to the particular problem with which the inventor was involved. The rationale behind this rule precluding rejections based on combination of teachings of references from nonanalogous arts is the realization that an inventor could not possibly be aware of every teaching in every art. *In re Wood*, 599 F.2d 1032, 202 USPQ 171, 174 (C.C.P.A. 1979) (citing *In re Antle*, 444 F.2d 1168, 1171-72, 170 USPQ 285, 287-88 (C.C.P.A. 1971)).

The Federal Circuit has clarified how to determine whether a reference is reasonably pertinent to the particular problem with which the inventor was involved. The Federal Circuit has stated that:

[a] reference is reasonably pertinent if ... it is one which, because of the matter with which it deals, logically would have commended itself to the inventor's attention in considering his problem. *In re Clay*, 966 F.2d 656, 22 USPQ 2d 1058, 1060-61 (Fed Cir. 1992).

Applicants submit that the matter with which the present application deals with is sanitary systems for use with a recreational vehicle and that one of ordinary skill in the art of sanitary systems for a recreational vehicle would not have been logically commended to review the construction of car heating devices to solve the problem to which the present application is directed (i.e., to fill a flush tank of a sanitary system with flush water and drain the flush water from the flush tank of a sanitary system). Consequently, the Link reference is not analogous art and cannot be properly combined with Sargent or cited as prior art. *Id.*, 966 F.2d at 658.

Even if the Link reference were to be characterized as analogous art, however, Applicants respectfully submit that the combination of references cited by the Office does not present a *prima facie* case of obviousness. The establishment of a *prima facie* case of obviousness requires that three basic criteria be met: 1) some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the reference teachings, 2) that there must be a reasonable expectation of success, and 3) that the prior art reference or references must teach or suggest all the claim limitations. See, e.g., *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). Moreover, the

teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on an applicant's disclosure. *Id.*

Concerning the motivation to combine the references, the Office has stated that it would have been obvious to combine Sargent with Link to provide the advantage of relative rotation of the spout to facilitate the draining of the liquid from the holding tank. Applicants note, however, if the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious. *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (C.C.P.A. 1959) MPEP 2143.01.

Sargent states that the principle of operation of his disclosure is to provide a fill that is at a vertical elevation that correlates to "the fill level within the water storage chamber" (see at least Col. 5, lines 50-68). The principle of the operation of the fill is to enable the water entering the fill to seek its own level with respect to the water storage chamber. This can be accomplished by the placement of the fill at a vertical elevation and the placement of conduit 660 at elevations that are below the full fluid level of the water storage tank so that as water is introduced into the fill the water in the fill will equate to the level of water in the water storage container.

Modifying the fill to include the funnel cock of Link would impermissibly change the method of operation of the fill. In this regard, the fill works based on gravity pulling the water into the water storage tank (due to the position of the conduit below the water storage tank) until the water equalizes in the system. To modify the fill to include a funnel cock for draining the liquid from the water storage tank would change the

principle of operation of the fill in that the fill works by gravity drawing the water into the water storage container. In order to drain liquid from the water storage tank, a source of negative pressure would have to be applied to the fill to draw the liquid out of the water storage tank, in direct contrast to the gravity-based principle of operation of the fill. Accordingly, Applicants submit there is no motivation to combine Link with Sargent as it would impermissibly change the method of operation of the fill of Sargent.

In addition, Applicants note that if the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900,221 USPQ 1125 (Fed. Cir. 1984) MPEP 2143.01. In the instant case, the proposed modification of the fill of Sargent to include the funnel cock of Link to the drain the liquid from the water storage tank would render the pourspout of Sargent and the sanitary system of Sargent, unsatisfactory for its intended purpose. In this regard, the purpose of the pourspout is to enable an operator to easily drain the fluid from the holding tank by depressing a vent valve with one hand while holding the holding tank with the other. Modifying the fill 220 to include a funnel cock to drain the liquid from the holding tank would render both the pourspout and the vent valve of Sargent unsatisfactory for its intended purpose. Thus, Applicants further assert that there is no motivation to combine Link with Sargent.

Further, Applicants submit that including the principles of the funnel cock of Link would not necessarily improve the draining of the liquid from the holding tank of Sargent as stated by the Office, but would rather negatively affect the desired operation of the fill, as it would require the conduit to be routed such that the fluid will flow out of the

holding tank (as configured, the fluid would have to flow upwardly against gravity to exit the fill). Accordingly, Applicants submit that the proposed modification is undesirable as the purpose of the fill of Sargent is to provide a vertically elevated plastic bottle that enables the water to flow downward through the conduit until the water in the plastic bottle equalizes with the water in the water holding tank. Applicants note that the Patent Laws draw a distinction between trade-offs and motivation to combine: trade-offs often concern what is feasible, not what is necessarily desirable, whereas motivation to combine requires the latter. See, e.g., *Winner International Royalty Corp. v. Wang*, 2002 F.3d 1340, 53 USPQ2d 1580 (Fed. Cir.), *cert. denied*, 530 U.S. 1238 (2000). Consequently, the modification that has been proposed by the Office (i.e., modifying the fill of Sargent to rotate as about a horizontal axis) is a trade-off rather than the requisite motivation-to-combine, since it concerns what may be feasible rather than what is necessarily desirable.

Additionally, Applicants submit the Office is improper in asserting that one of ordinary skill, based on Sargent, would find it obvious to modify Sargent with Link to arrive at Applicants' claims herein. In particular, Applicants note that although one skilled in the art might find it obvious to try various combinations of prior art components, **this is not the standard of 35 U.S.C. § 103.** (*In re Geiger*, 815 F.2d 686, 688, 2 USPQ2d 1276, 1278 (Fed. Cir. 1987). Rather, in order to find Applicants' claims obvious, the Office must produce both the suggestion and expectation of success in making such a combination. As the prior art discussed does not teach, suggest or disclose any suggestion or expectation of success in the use of the fill to drain water from the holding tank, and further, since this modification would render the pourspout of

Sargent unsatisfactory for its intended purpose, Applicants respectfully assert the Office's combination of Sargent with Link is improper.

Accordingly, in view of the above discussion, Applicants respectfully assert the Office has not presented a *prima facie* case of obviousness and as such, Applicants respectfully request the Office to reconsider and withdraw the rejection of Claims 1 and 20 under 35 U.S.C. § 103(a).


With regard to Claims 2-6, and 21-35, Applicants note these claims depend directly or indirectly from either independent Claims 1 or 20 and, thus, should be in condition for allowance for the reasons set forth for Claims 1 and 20 above. Accordingly, Applicants respectfully requests the Office reconsider and withdraw the rejections of Claims 2-6 and 21-35 under 35 U.S.C. § 103(a).

CONCLUSION

It is believed that all of the stated grounds of rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider and withdraw all presently outstanding rejections. It is believed that a full and complete response has been made to the outstanding Office Action and the present application is in condition for allowance. Thus, prompt and favorable consideration of this amendment is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at (248) 641-1600.

Respectfully submitted,

Dated: 1/16/07

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